

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905

No. 788. 432

PAUL LACROIX, APPELLANT,

MOTOR TAXIMETER CAB COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 8, 1906.

(22,011)

(22,011)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 785.

PAUL LACROIX, APPELLANT,

vs.

MOTOR TAXIMETER CAB COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

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Subpœna.

The President of the United States of America to The Motor Taximeter Cab Company, Henry U. Kibbe, Henry F. Sewell, Paul E. Razor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray, and Henry D. Miller, Greeting:

You are hereby commanded that you and each of you personally appear before the Judges of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, in Equity, on the first Monday of February, A. D. 1910 wherever the said Court shall then be, to answer a bill of complaint exhibited against you in the said Court by Paul Lacroix, and do further receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty on you and each of you of Two Hundred and Fifty Dollars.

Witness, The Honorable Melville W. Fuller, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, on the 28th day of December, in the year of our Lord one thousand nine hundred and nine, and of the Independence of the United States of America, the one hundred and thirty-fourth.

JOHN A. SHIELDS, *Clerk.*

COUDERT BROTHERS,

Solicitors for Complainant.

The Defendants are required to enter appearance in the above cause, in the Clerk's Office of this Court, on or before the first Monday of February, 1910, or the bill will be taken *pro confesso* against them.

J. A. S., *Clerk.*

(Endorsed:). Due service of the within Subpœna ad respondendum is hereby admitted this 28th day of December, 1909 by the within named defendant.—Harvey T. Andrews, Att'y for Defendants.—U. S. Circuit Court, Southern District N. Y. Filed Jan. 15, 1910. John A. Shields, Clerk.

Bill of Complaint.

In the Circuit Court of the United States for the Southern District of New York.

In Equity.

PAUL LACROIX, Complainant,
against

MOTOR TAXIMETER CAB COMPANY, HENRY U. KIBBE, HENRY F. Sewall, Paul E. Razor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller, Defendants.

To the Honorable the Judges of the Circuit Court of the United States in and for the Southern District of New York:

Paul Lacroix, of Paris, France, and a citizen of the French Republic, and a stockholder in the Motor Taximeter Cab Company,

brings this his bill of complaint in behalf of himself and all other stockholders who are similarly situated, and who shall be entitled to avail themselves of the benefit of this suit against the said Motor Taximeter Cab Company of the City of New York, a corporation organized and existing under the laws of the State of New York and an inhabitant of the Southern District of New York, and having its principal office in the said district, and Henry U. Kibbe, Henry F. Sewall, Paul E. Razor, Thomas M. Carroll and Harvey T. Andrews, all of the City of New York and citizens and inhabitants of the State of New York and Southern District of New York, John P. Murray, of Jersey City, and a citizen and inhabitant of the State of New Jersey and District of New Jersey, and Henry D. Miller, of Bridgeport, Connecticut, and a citizen and inhabitant of the State of Connecticut and District of Connecticut.

And thereupon your orator complains and says:

I. The defendant, the Motor Taximeter Cab Company (hereinafter styled the defendant company), is a corporation organized and existing under and by virtue of the laws of the State of New York and is a citizen and inhabitant of said State, and has its principal place of business at No. 249 West 64th Street, in the Borough of Manhattan, in the City of New York, in the Southern District of New York. The capital stock of said defendant company consists of one hundred and fifty thousand (\$150,000) dollars, divided into fifteen hundred (1,500) shares of the par value of one hundred (\$100) dollars each, of which nine hundred (900) shares have been issued to wit: four hundred (400) shares of preferred stock and five hundred (500) shares of common stock. Said defendant company is organized for profit and is engaged in the business of owning motor vehicles and leasing the same for hire. Such business is transacted and conducted wholly within the Borough of Manhattan, in the City and State of New York. Said defendant company owns forty-three (43) motor vehicles of the kind and style known as taxicabs and leases all of them for a stated and agreed rental to a single customer, the Renault Taxi Service, a corporation organized and existing under the laws of the State of New York and doing business in said State. The defendant company is engaged in no other business whatever and its entire income is exclusively derived from the rental of said vehicles as aforesaid.

5 II. The net profits or income of the defendant company since January 1, 1909, have already exceeded the sum of five thousand (\$5,000) dollars, and for the year ending December 31, 1909, as your orator is informed and verily believes, will exceed the sum of ten thousand (\$10,000) dollars after deducting all expenses, charges, losses, depreciation, taxes, and interest paid out of or allowed against such income during said year. It has not received up to the present time and during the remainder of the year will not receive any dividends upon stock of other corporations, associations or companies whatever.

III. The defendants Henry U. Kibbe, Henry F. Sewall, Paul E. Razor, Thomas M. Carroll and Harvey T. Andrews all reside in the City of New York and are citizens and inhabitants of the State of

New York and Southern District of New York. The defendant Henry D. Miller resides in Bridgeport, Connecticut, and is a citizen and inhabitant of the State of Connecticut and District of Connecticut. The defendant John P. Murray resides in Jersey City, New Jersey, and is a citizen and inhabitant of the State of New Jersey and District of New Jersey. The said individual defendants, together with Paul Lacroix, your orator, compose the Board of Directors of the defendant company.

IV. Your orator is and has been since the organization of the defendant company in 1908, the largest stockholder therein and is and has been the owner and registered holder of twenty-five (25%) per cent of the outstanding stock, to wit: One hundred and sixty (160) shares of the common stock of the par value of sixteen thousand (\$16,000) dollars and of an actual value exceeding sixteen thousand (\$16,000) dollars, and of sixty (60) shares of the preferred stock of the par value of six thousand (\$6,000) dollars and of an actual value exceeding six thousand (\$6,000) dollars. Your
6 orator is and has been since the 6th day of August, 1908, one of the directors of said defendant company.

V. By the certificate of incorporation of the said defendant, and by and under the laws of the State of New York, the management of the property and affairs and concerns of the defendant is committed to its Board of Directors. The majority of said Board of Directors claim and assert that under and by virtue of the alleged authority of the provisions of an Act of Congress of the United States, entitled "An Act to provide revenue, to equalize duties and encourage the industries of the United States, and for other purposes," enacted on or about the 5th day of August, 1909, said defendant company is, or will be liable to pay to the United States on or before the 30th day of June, 1910, a tax of one percentum upon the entire net income, over and above the sum of \$5,000 received by said defendant from all sources during the year ending December 31st, 1909, computed as provided in said act and otherwise to comply with the provisions of said act.

VI. Said defendant company has received since on or about the 17th day of November, 1909, repeated notices from the United States Collector of Internal Revenue for the Third District of New York, calling upon the defendant company to furnish certain information intended to facilitate said Collector and the other taxing authorities of the United States in the imposition, assessment and collection of the tax mentioned and set forth in said Act of Congress. At a meeting of the Board of Directors of said defendant company, held at its principal office on the 18th day of November, 1909, it was resolved by a majority vote that the officers of the company furnish
7 said Collector of Internal Revenue with the information requested, and many any and all such reports as such Collector or any other revenue officers of the United States Government may request, and that the company and its officers comply in all respects with said Act of Congress and pay the tax imposed thereby whenever the same shall have been ascertained and shall have become due and payable.

VII. Your orator was present at said meeting and opposed the passage of said resolution and the taking by the company and its officers of the action thereby provided for, upon the ground that said Act of Congress, and the said tax sought to be imposed thereby, were contrary to the Constitution of the United States and therefore void and of no effect, and voted against said resolution, and contended that the company and its officers should refuse to comply with said Act and should take all such measures as might be available to contest the validity of said Act and to oppose its enforcement, and resist the imposition, assessment and collection of said tax, and should refuse to furnish the information and make the return provided for by the said Act.

VIII. Your orator is informed and verily believes that the defendant company and its officers and directors intend to comply with said Act, and make and file the return required thereby and pay the tax imposed thereby, and that such action on their part, in the payment of a void and unconstitutional tax, will unlawfully divert a portion of the funds of said defendant, and will thereby render the stock held by your orator and by other stockholders similarly situated of less value.

IX. Your orator charges that the provisions in respect of said tax, contained in said Act of Congress, are unconstitutional, null and void, in that the said tax, although described in said Act as a Special Excise Tax, is in fact and in legal effect a direct tax upon the property held and owned by the defendant, which direct
8 tax is not in and by said Act apportioned among the several States, as required by the Constitution of the United States; and that if said tax should be held not to be a direct tax, nevertheless said provisions of said Act are unconstitutional, null and void, in that said tax is not uniform throughout the United States as required by the United States Constitution, but applies only to corporations organized and doing business for profit, and not to individuals or partnerships doing the same or similar business for profit; and further in that the tax impairs property rights vested prior to the passage of said Act of Congress, and is imposed upon and in respect of incomes which accrued prior to the date upon which said Act was passed and approved; and further in that the subject matter of said tax, to wit, the doing of business for profit by a corporation, is not within the taxing power of the United States, and that such tax is an invasion of the rights and prerogatives of the several States. Your orator further charges that the provisions in said Act in respect to the reports and returns to be made by corporations thereunder, and directing that such returns shall be public records open to inspection, violate the constitutional prohibition against unreasonable searches, and that thereby the defendant company and every corporation similarly situated may be compelled to produce and disclose their private books and papers in order to make them liable for a penalty or a forfeiture of their property, and that said Act is in other respects unconstitutional and void.

X. Your orator further sets forth that if the defendant company proceeds, as threatened, to comply with said Act of Congress, and

make the returns and pay the tax required thereby, such action on its part will render your orator's stock in said corporation of less value and less productive, and that such injury is a continuing one, and one which cannot be adequately compensated in damages, and that your orator is without remedy save in a Court of Equity.

XI. Your orator further sets forth that he was a shareholder in the defendant corporation prior to the passage of said Act of Congress, and that this suit is not a collusive one to confer on a Court of the United States jurisdiction of a case of which it would not otherwise have cognizance. Your orator has made every effort within his power to induce the other Directors of the defendant corporation to oppose the enforcement of said Act of Congress, as heretofore set forth, and has failed to secure such action on their part by reason of the majority vote of said Directors to the contrary heretofore mentioned.

XII. Your orator further shows that this is a suit of a civil nature in equity and arises under the Constitution of the United States and under an Act of Congress of the United States providing for internal revenue, and that it is furthermore a controversy between a foreign citizen, to wit, a citizen of the French Republic, and citizens of the States of New York, Connecticut and New Jersey.

Wherefore your orator prays as follows:

1. That a writ of subpoena may issue out of this Honorable Court directed to the defendant company, The Motor Taximeter Cab Company, and the defendants, Henry U. Kibbe, Henry F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller, requiring and demanding them and each of them to appear in this cause, upon a day to be therein named, and answer the several allegations in this bill of complaint contained; an answer under oath being hereby expressly waived.

2. That it be adjudged and decreed that the said provisions for said tax, known as the Corporation Income Tax, contained in said Act of Congress of August 5th, 1909, are unconstitutional, null and void.

3. That the defendant company, its officers, agents, attorneys and servants, and the individual defendants, its directors, be perpetually enjoined and restrained from complying with the provisions of said Act, and making the returns and statements and paying the tax required thereby, and that a preliminary injunction issue out of this Honorable Court enjoining and restraining said defendant company, its officers, agents, attorneys and servants, and the individual defendants, its directors, in like manner, until the further order of the Court.

4. That your orator may have such other and further relief in the premises as may be just, including his costs.

And your orator will ever pray, etc.

COUDERT BROTHERS,

Solicitors for Complainant, 2 Rector Street, N. Y.

FREDERIC R. COUDERT,

HOWARD THAYER KINGSBURY,

Of Counsel.

11 STATE AND COUNTY OF NEW YORK,
Southern District of New York, ss:

Paul Lacroix, being duly sworn, says: I reside in Paris, France, and am temporarily sojourning in the City of New York. I am the complainant herein; I have read the foregoing bill of complaint and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

PAUL LACROIX.

Sworn to before me this 27th day of December, 1909.

CHAS. A. CONLON,

Notary Public, New York Co.

(Endorsed:) U. S. Circuit Court, Southern District N. Y., Filed Dec. 28, 1909, John A. Shields, Clerk.

Appearance.

United States Circuit Court, Southern District of New York.

In Equity.

PAUL LACROIX, Complainant,
 against

MOTOR TAXIMETER CAB COMPANY, HENRY U. KIBBE, HENRY F. Sewall, Paul E. Razor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry O. Miller, Defendants.

To the Clerk U. S. Circuit Court:

Please enter and file my appearance as Solicitor and Counsel for all of the above named defendants in the above entitled suit.

Dated New York, Jan. 15th, 1910.

HARVEY T. ANDREWS,
*Solicitor for Defendants, 2 Rector Street,
 New York City, N. Y.*

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Jan. 15, 1910. John A. Shields, Clerk.

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Answer.

In the Circuit Court of the United States, for the Southern District of New York.

PAUL LACROIX, Complainant,
 against

MOTOR TAXIMETER CAB COMPANY, HENRY U. KIBBE, HENRY F. Sewall, Paul E. Razor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller, Defendants.

To the Honorable, the Judges of the Circuit Court of the United States, in and for the Southern District of New York:

The answer of the above-named defendants, Motor Taximeter Cab Company, Henry U. Kibbe, Henry F. Sewall, Paul E. Razor, Thomas

M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller, to the bill of complaint of the above-named complainant, or such part thereof as defendants are advised is material or necessary to be answered, respectfully shows to this Court:

I. Said defendants admit the allegations contained in paragraphs numbered I, II, III, IV, V, VI and the first paragraph numbered "VII" of said bill of complaint.

II. They deny the allegations contained in the second paragraph numbered "VII" (apparently intending VIII), except that it was and is the intention of these defendants to comply with the Act of Congress mentioned therein and to make and file the return required thereby.

13 III. They deny upon information and belief the allegations or conclusions set forth in paragraph IX of said bill of complaint, wherein it is alleged that the provisions relating to the tax contained in the said Act of Congress are unconstitutional, null and void.

IV. These defendants further deny, upon information and belief, the allegations or conclusions contained in paragraph X of said bill of complaint to the effect that if the defendant company complies with the said Act of Congress, and makes the return and pays the tax required thereby, said action will result in a continuing injury and render the orator's stock of less value. They admit that complainant has no remedy at law, but they deny he is entitled to any relief either at law or in equity.

V. Said defendants admit the allegations contained in paragraphs XI and XII of said bill of complaint.

VI. And these defendants further answering respectfully show to this Court, that heretofore and at or about the date mentioned in the bill of complaint, to wit, the 18th day of November, 1909, at a regular meeting of the Board of Directors of the above-named defendant company, a resolution was passed by a majority vote that the officers of the company furnish the Collector of Internal Revenue with the information requested by him and that the company and its officers comply in all respects with the Act of Congress imposing the tax mentioned and described in the bill of complaint, and that the company should pay the same when ascertained; that the said resolution was passed and said action taken in good faith, and with the view of prompt and regular compliance with an Act of Congress which these defendants believed and still believe to be constitutional,

14 and that it was for the best interests of the defendant company and its stockholders that the said law should be complied with and the tax paid in accordance therewith, and these defendants respectfully submit that the aforesaid action of the Board of Directors of the defendant company is legal and proper, and that the said law is constitutional, and that a failure on the part of the defendant company to comply therewith would subject the said company and its officers and directors to penalties much greater in amount than the tax imposed by said Act.

Wherefore, these defendants having fully answered the bill of complaint as far as they are advised the same is material or necessary

to be answered, deny that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, or any relief whatsoever; and pray that the said bill of complaint be dismissed with costs, or that this Court render such judgment in the premises as will protect these defendants and govern their future action.

MOTOR TAXIMETER CAB CO.
By HENRY F. SEWALL,
Treasurer. [SEAL.]

HARVEY T. ANDREWS,
Solicitor for Defendants, Office & P. O.
Address, No. 2, Rector St., New York City.

15 UNITED STATES OF AMERICA,
State and County of New York,
Southern District of New York, ss:

Henry F. Sewall being duly sworn, says: that he is the Treasurer of the Motor Taximeter Cab Company, a corporation formed under and existing under the laws of the State of New York, and one of the defendants in the above-entitled action, and is personally familiar with all of the facts and circumstances constituting the subject matter of this action. That the foregoing answer is true to his own knowledge except as to those matters stated to be alleged upon information and belief, and as to those matters he believes it to be true. That the reason this verification is made by deponent and not by said defendant corporation is that the defendant is a corporation and this deponent is an officer thereof, to wit, the Treasurer, and is fully acquainted with the facts and circumstances relating to the matters in controversy.

HENRY F. SEWALL, *Treasurer.*

Sworn to before me this 7th day of January, 1910.

[SEAL.]

WILLIAM BARNES,
Notary Public, New York County.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Jan. 15, 1910. John A. Shields, Clerk.

16 United States Circuit Court, Southern District of New York.

PAUL LACROIX, Complainant,
against

MOTOR TAXIMETER CAB COMPANY, HENRY U. KIBBE, HENRY F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller, Defendants.

Final Decree Dismissing Suit.

The above-entitled cause, having been by order of Court set for final hearing upon the bill and answer herein, duly came on for such final hearing at a Stated Term of this Court held on the first

day of February, 1910, and was argued by counsel, and the Court upon due consideration of said bill and answer and the arguments of counsel being of the opinion that the provisions of the act of Congress mentioned in said bill of complaint are constitutional, valid and effectual, doth now

Order, adjudge and decree that this suit be, and the same hereby is, dismissed upon the merits.

Dated, February first, 1910.

JAMES L. MARTIN,
U. S. Dist. Judge.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Feb. 2, 1910: John A. Shields, Clerk.

17 Circuit Court of the United States, Southern District of New York.

PAUL LACROIX, Complainant,
against

MOTOR TAXIMETER CAB COMPANY, HENRY U. KIBBE, HENRY F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller, Defendants.

Petition of Appeal.

To the Honorable James L. Martin, one of the Judges of the above named Court, presiding therein:

The above named complainant in the above entitled cause, Paul Lacroix, conceiving himself aggrieved by the order and decree made and entered in the above entitled cause on the first day of February, 1910, wherein and whereby it was ordered and adjudged that the above entitled suit be dismissed upon the merits, doth hereby appeal to the Supreme Court of the United States from the said order and decree and each and every part thereof, for the reasons set forth in the assignment of errors filed herewith, and he prays that this his petition for said appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, February first, 1910.

COUDERT BROTHERS,
Solicitors for Complainant-Appellant,
#2 Rector Street, New York City, New York.

18 *Order Allowing Appeal.*

The foregoing petition of appeal is hereby granted and the appeal allowed as therein prayed.

Dated, February first, 1910.

JAMES L. MARTIN,
U. S. Dist. Judge.

19 Circuit Court of the United States, Southern District of New York.

PAUL LACROIX, Plaintiff,
against

MOTOR TAXIMETER CAB COMPANY, HENRY U. KIBBE, HENRY F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller, Defendants.

Assignment of Errors.

Comes now the complainant and appellant in the above entitled cause and files the following assignment of errors upon which he will reply upon his appeal from the decree made by this Honorable Court on the first day of February, 1910, in the above entitled cause.

I. That said Court erred in adjudging that the provisions of the Act of Congress mentioned in the bill of complaint herein are constitutional, valid and effectual.

II. That the Court erred in not adjudging that said provisions of said Act of Congress are contrary to and inconsistent with and in violation of the Constitution of the United States and hence null, void and of no effect.

III. That said Court erred in dismissing this suit and complainant's said Bill of Complaint.

IV. That said Court erred in not granting a final decree in favor of the complainant as prayed in the said Bill of Complaint.

Wherefore the said Paul Lacroix prays that said decree of the Circuit Court of the United States for the Southern District of New York be reversed, and that said Circuit Court be directed to
20 grant a decree in favor of complainant for the relief prayed in the said Bill.

Dated, February 1st, 1910.

COUDERT BROTHERS,
Solicitors for Complainant-Appellant,
#2 Rector Street, New York City, New York.

FREDERIC R. COUDERT,
Of Counsel.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Feb. 2, 1910. John A. Shields, Clerk.

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Appeal Bond.

Circuit Court of the United States, Southern District of New York,

PAUL LACROIX, Complainant,
against

MOTOR TAXIMETER CAB COMPANY, HENRY U. KIBBE, HENRY F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller, Defendants.

Know all men by these Presents, that we, Paul Lacroix as principal and Frederic R. Coudert and Howard Thayer Kingsbury, as sureties, are held and firmly bound unto Motor Taximeter Cab Company, Henry U. Kibbe, Henry F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller in the just and full sum of \$250.00 to be paid to the said Motor Taximeter Cab Company, Henry U. Kibbe, Henry F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray, and Henry D. Miller, their legal representatives, successors and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated this 1st day of February, in the year 1910.

Whereas lately at a session of the Circuit Court of the United States for the Southern District of New York in a suit pending in said Court between the said Paul Lacroix as complainant and the said Motor Taximeter Cab Company, Henry U. Kibbe, Henry F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller as defendants, a decree was rendered against the said Paul Lacroix, dismissing his said suit, and the said Paul Lacroix has obtained from said Court an order allowing an appeal to the Supreme Court of the United States to reverse said decree and a citation directed to the defendants in said suit is about to be issued, citing and admonishing them to be and appear at the said Supreme Court of the United States.

Now, the condition of the above obligation is such that if the said Paul Lacroix shall prosecute his said appeal to effect, and shall answer all damages and costs that may be awarded against him if he fail to make his plea good, then the above obligation is to be void, otherwise to remain in full force and virtue.

PAUL LACROIX.

By COUDERT BROTHERS, *Solicitors.*

FREDERIC R. COUDERT.

HOWARD THAYER KINGSBURY.

[SEAL.]

[SEAL.]

23

STATE AND COUNTY OF NEW YORK,

Southern District of New York, ss:

On this First day of February, 1910, before me personally came Frederic R. Coudert and Howard Thayer Kingsbury to me known

and known to me to be two of the individuals described in and who executed the foregoing instrument and duly acknowledged to me that they executed the same.

[SEAL.]

A. D. WEEKES, JR.,
Notary Public, Nassau Co.

Cert. Filed in N. Y. Co. & Register's Office.

The foregoing bond is hereby approved as to form, amount and sufficiency of sureties.

Dated, February, 1st, 1910.

JAMES L. MARTIN,
U. S. Dist. Judge.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Feb. 2, 1910, John A. Shields, Clerk.

24 The President of the United States to Motor Taximeter Cab Company, Henry U. Kibbe, Henry F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington in the District of Columbia within thirty days from the date of this citation pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein Paul Lacroix is appellant and you are appellees, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this first day of February, in the year of our Lord one thousand nine hundred and ten, and of the independence of the United States the One hundred and thirty-fourth.

JAMES L. MARTIN,
U. S. Dist. Judge.

25 [Endorsed:] Eq. 5. 109. United States Circuit Court, Southern District of New York. Paul Lacroix, Complainant, against Motor Taximeter Cab Company, Henry U. Kibbe, Henry F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray, and Henry D. Miller, Defendants. E. & A. D. 3060. Citation. Coudert Brothers, Sol'rs for Complainant, 2 Rector Street, Borough of Manhattan, New York. Due service of a copy of the within citation is hereby admitted this 2d day of February, 1910. Harvey T. Andrews, Solicitor for defendants. U. S. Circuit Court, Southern District, N. Y. Filed Feb. 2, 1910. John A. Shields, Clerk.

26

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify that the foregoing pages, numbered from one to twenty-five inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Paul Lacroix, Complainant-Appellant, against Motor Taximeter Cab Company, Henry U. Kibbe, Henry F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller, Defendants-Appellees, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 4th day of February, in the year of our Lord One Thousand Nine Hundred and Ten, and of the Independence of the said United States the One Hundred and Thirty-fourth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Endorsed:] United States Supreme Court. Paul Lacroix, Compl't-Appellant, vs. Motor Taximeter Cab Company, Henry U. Kibbe, Henry F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller, Def'ts-Appellees. Transcript of Record from the Circuit Court of the United States for the Southern District of New York.

Endorsed on cover: File No. 22,011. S. New York C. C. U. S. Term No. 785. Paul Lacroix, appellant, vs. Motor Taximeter Cab Company et al. Filed February 8th, 1910. File No. 22,011.

Office Supreme Court, U. S.

FILED.

FEB 21 1910

JAMES H. McKENNEY,

Clerk.

Supreme Court of the United States,

OCTOBER TERM 1909 NO. 784

431

PERCY H. BRUNDAGE,
Appellant,

vs.

BROADWAY REALTY COMPANY and
others,
Appellees.

Motion to
Advance.

2

Now come the appellant, Percy H. Brundage, by Frederic R. Coudert his counsel, and the appellees Broadway Realty Company, Joseph F. Stier, Charles J. Peabody, George Foster Peabody, and Gardiner M. Lane, by George L. Nichols, their counsel, and respectfully move the Court to advance the above entitled cause upon the docket and set it down for hearing on March 14th, 1910, or such other early day as shall be most convenient to the Court and satisfactory to the Attorney General, on the ground that this is a revenue case in which the United States are concerned and which involves a matter of general public interest, to wit, the constitutionality, construction and application of those provisions of the Act of Congress of the United States entitled "An Act to provide

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- 4 revenue, to equalize duties and encourage the industries of the United States and for other purposes" enacted on or about August 5th, 1909, providing for the imposition and collection of an annual tax upon the income of corporations, associations and insurance companies, commonly known as the "Corporation Income Tax Law."

- This cause is a suit in Equity brought by Percy H. Brundage, the complainant and appellant, in the Circuit Court of the United States for the Southern District of New York against the Broadway Realty Company, (a corporation in which the said Percy H. Brundage is a stockholder),
 5 and the individual defendants and appellees, who constitute the Board of Directors of the said Broadway Realty Company, to restrain the defendants from complying with the said Act of Congress and making the return required and paying the tax imposed thereby, upon the ground that said provisions of said Act of Congress are unconstitutional.

- By a special order of Court dated January 28th, 1910, this cause was set for hearing on bill and answer on February 1st, 1910, and was heard upon that day, and the Court thereupon on the same day made a decree adjudging that the said
 6 Act of Congress is constitutional and dismissing the suit upon the merits. An appeal to this Court was immediately taken and allowed and this cause is now No. 784 upon the docket of this Court.

The procedure followed and the questions involved in this case are the same as in the case of Paul Lacroix *vs.* Motor Taximeter Cab Company, No. 785 October Term 1909, a motion to advance which will be made simultaneously here-

with, except that in the present case the income 7
of the defendant corporation is derived principally from the rental of real property and the remainder from interest and dividends upon certain securities. The same reasons for advancing the cause upon the docket exist in both cases and it is desired that they should be heard together.

Dated, New York, February 21st, 1910.

FREDERIC R. COUDERT,
Counsel for Appellant.

GEORGE L. NICHOLS,
Counsel for Appellees. 8



Office Supreme Court, U. S.

FILED.

FEB 21 1910

JAMES H. MCKENNEY,

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Supreme Court of the United States,

OCTOBER TERM 1909 NO. 766. 7422

PAUL LACROIX,
Appellant,

vs.

Motion to
Advance.

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MOTOR TAXIMETER CAB COMPANY,
and others,
Appellees.

Now come the appellant, Paul Lacroix, by Frederic R. Coudert his counsel, and the appellees Motor Taximeter Cab Company, Henry U. Kibbe, Henry F. Sewall, Paul E. Rasor, Thomas M. Carroll, Harvey T. Andrews, John P. Murray and Henry D. Miller, by Harvey T. Andrews, their counsel, and respectfully move the Court to advance the above entitled cause upon the docket and set it down for hearing on March 14th, 1910, or such other early day as shall be most convenient to the Court and satisfactory to the Attorney General, on the ground that this is a revenue case in which the United States are concerned and which involves a matter of general public interest, to wit, the constitutionality, construction and application of those provisions of the Act of Congress of the United States entitled "An Act to

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- 4 provide revenue, to equalize duties and encourage the industries of the United States and for other purposes" enacted on or about August 5th, 1909, providing for the imposition and collection of an annual tax upon the income of corporations, associations and insurance companies, commonly known as the "Corporation Income Tax Law."

This cause is a suit in Equity brought by Paul Lacroix, the complainant and appellant, in the Circuit Court of the United States for the Southern District of New York against the Motor Taximeter Cab Company, (a corporation in which the said Paul Lacroix is a stockholder and Director),
5 and the individual defendants and appellees, who are the other members of the Board of Directors of the said Motor Taximeter Cab Company, to restrain the defendants from complying with the said Act of Congress and making the return required and paying the tax imposed thereby. The procedure followed in this case is the same as that adopted in the case of *Pollock v. Farmers' Loan & Trust Company*, 157 U. S. 429 and 158 U. S. 601. The Bill of Complaint sets forth that the said Act of Congress is unconstitutional in that the tax sought to be imposed thereby is in fact
6 and in legal effect a direct tax upon the property held and owned by the defendant and is therefore void because not apportioned among the several States, and that said tax is not uniform throughout the United States, and impairs property rights vested prior to the passage of said Act of Congress, and is sought to be imposed upon a subject matter not within the taxing power of the United States, and is an invasion of the rights and prerogatives of the several States, and that said Act is unconstitutional in other respects, and

that the payment of said unconstitutional tax will unlawfully divert a portion of the defendant corporation's funds and will render the stock thereof held by the appellant of less value. 7

To this Bill of Complaint the defendants interposed an answer expressly admitting all the allegations of fact in the Bill, but setting forth that the said Act of Congress is constitutional and that the defendant corporation and the individual defendants, its directors, are bound to comply therewith.

By a special order of Court dated January 18th, 1910, the cause was set for hearing on Bill and Answer on February 1, 1910, and was heard upon that day, and the Court thereupon on the same day made a decree adjudging that the said Act of Congress is constitutional and dismissing the suit upon the merits. An appeal to this Court was immediately taken and allowed and this cause is now No. 785 upon the docket of this Court. 8

The Act of Congress in question requires that the return to be made by corporations thereunder shall be filed not later than March 1st next and that the tax shall be assessed on or before June 1st and paid on or before June 30th, and imposes heavy penalties for failure to comply therewith. Unless the question of the constitutionality of said Act is speedily determined, all corporations must either disclose their private affairs in a report which said Act declares shall constitute a public record and be open to inspection as such, and pay a heavy and burdensome tax, which can be recovered back only with difficulty and expense in case the Act is determined to be unconstitutional, or if such corporation fail or refuse to 9

- 10 comply with said Act, they must incur heavy penalties in the event that the Act shall be determined to be constitutional.

In the case of the defendant corporation, all of its income is derived from the rental of personal property and the tax falls entirely upon such income. Such a tax was held by this Court in *Pollock v. Farmers' Loan & Trust Company*, 157 U. S., 429 and 158 U. S., 601, to be a direct tax and hence subject to the rule of apportionment. It was also held by this Court in *Spreckels Sugar Refining Company v. McClain*, 192 U. S., 397, that income so derived should not be included in meas-

- 11 uring the amount of income upon which a tax on business was imposed. This cause presents the question whether these rules apply to the tax imposed by the Act of August 5th, 1909.

Other objections to the constitutionality of the Act are also involved in this cause.

The questions presented are of great public importance and it is a matter of great urgency for the business interests of the entire country that they should be speedily determined.

Dated New York, February 21st, 1910.

- 12 FREDERIC R. COUDERT,
 Counsel for Appellant.

 HARVEY T. ANDREWS,
 Counsel for Appellees.